



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Mr. Joseph Branch
P.O. Box 206
Newport, NH 03773

**ADMINISTRATIVE ORDER NO.
AO WD 02-12**

March 7, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Mr. Joseph L. Branch pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Joseph L. Branch is an individual having a mailing address of P.O. Box 206, Newport, NH 03773.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in wetlands. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted wt 100 *et seq.* to implement this program.
2. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. Joseph L. Branch is the owner of property located at 16 Chandler Mill Road, Newport, identified on Newport Tax Maps as Tax Map 52, lot 1317 ("the Property").
4. United Construction Corporation is the owner of land that abuts the Property along the southeast and northeast boundaries ("the Abutting Property").
5. Review of the National Wetlands Inventory Map and USGS topographical maps indicate that a perennial stream ("the Stream") flows through the southern part of the Property from northeast to southwest. The Stream runs approximately parallel and within 20 feet of the southeast property line in this location.

6. On August 2, 2001, DES received a complaint from Jeff Cloutier that Mr. Branch had excavated the Stream on the Property on July 28th and 29th.
7. On September 26, 2001, DES personnel inspected the property and found the following:
 - a. A 332'-long section of streambed had been excavated to a width of 10'.
 - b. Riprap had been placed along a 100' section of streambank.
 - c. The Stream had been rerouted to remove a meander of unknown length in the course of the Stream.
 - d. A bridge measuring 4' wide by 14'9" had been placed over the Stream.
8. On a stamped surveyed plan of the Abutting Property dated April 29, 1982, the property line running northeast (N52°58'30") from Cutts Road is 220.0' long. The property line then runs northwest for 60.0'(N21°48'W) towards Chandler's Mill Road. Observation based on this surveyed plan shows that the excavation extends within 20 feet and beyond the northwest property line onto the Abutting Property.
9. RSA 482-A:3-I provides that "[n]o person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
10. Wt 304.04, Setback From Property Lines, provides that DES "shall limit the location of a project to at least 20 feet from an abutting property line or imaginary extension thereof over surface water unless it receives written agreement from the affected abutter concurring with any impact that may result relative to the abutter's interests."

D. DETERMINATION OF VIOLATIONS

1. Mr. Branch has violated RSA 482-A:3, I by dredging 332 linear feet of the Stream to a width of 10' on the Property without a permit from DES.
2. Mr. Branch has violated RSA 482-A:3, I by filling an unknown amount of wetlands for the purpose of rerouting the Stream on the Property without a permit from DES.
3. Mr. Branch has violated RSA 482-A:3, I by filling approximately 100 linear feet of the bank of the Stream with riprap on the Property without a permit from DES.
4. Mr. Branch has violated RSA 482-A:3, I by performing excavation and filling of a wetland on the Abutting Property and within 20 feet of his property line without the abutter's consent.

E. ORDER

Based on the above findings, DES hereby orders Mr. Branch as follows:

1. Obtain written permission from an authorized agent of United Construction Corporation to execute the stream restoration on the Abutting Property before commencing work.

2. Within 30 days of the date of this Administrative Order, submit a restoration plan to DES for review and approval. Have the restoration plan prepared by a certified wetland scientist or professional engineer, and include provisions for restoring the 332' long section of perennial stream to its prior condition and location, removing riprap, and stabilizing stream banks with vegetation on the Property and the Abutting Property. Submit the following with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. Existing conditions, with wetland boundaries; and
 - ii. Proposed conditions after reestablishing the jurisdictional areas;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
- c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
- d. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date;
- e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project; and
- f. A provision to delineate the wetlands within the restoration site after five full growing seasons and to document the delineation with data forms and depict the delineation on a site plan.

3. Retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit the restoration progress reports.

4. Execute the restoration plan only after receiving written approval from and as conditioned by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Mary Ann Tilton
DES Water Division
6 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: mtilton@des.state.nh.us

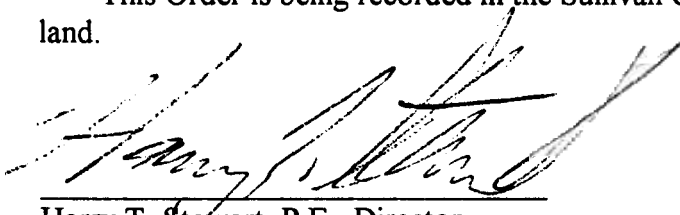
F. APPEAL

Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

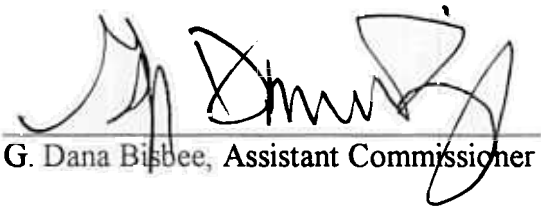
G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. Branch remains obligated to comply with all applicable requirements. DES will continue to monitor Mr. Branch's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Sullivan County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director
Water Division



G. Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7001 1940 0002 4869 5529

cc: ✓Gretchen Rule, Administrator, DES Legal Unit
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Sullivan County Registry of Deeds
Newport Selectmen
Newport Conservation Commission
United Construction Corporation